

CERE-C (405)

6 February 1998

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance - Privatization/Disposal of Utility Systems at BRAC Military Installations

Enclosed is a copy of a memorandum from the Deputy Assistant Secretary of the Army (Installations and Housing) concerning the above subject. The enclosed memorandum and its attachment are provided for your information.

FOR THE COMMANDER:

Encl
as

B. J. FRANKEL
Director of Real Estate

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
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December 16, 1997

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance - Privatization/Disposal of Utility Systems at BRAC
Military Installations

Effective immediately, the enclosed guidance will be implemented for the conveyance of Army-owned utility systems at BRAC installations to non-Government entities, to include utility companies, state and local municipal governments/agencies and Local Redevelopment Authorities (LRA). For purposes of this guidance, the concept of "privatization of utilities" is an option only available to realigned BRAC installations; "disposal of utilities" can be used by all BRAC installations. This guidance addresses the real estate issues for the conveyance of utility systems and is not intended to revise or supersede existing policies and procedures involving power procurement in the privatization process.

Paul W. Johnson
Deputy Assistant Secretary of the Army
(Installations and Housing)
OASA(I,L&E)

Enclosure

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DEPARTMENT OF THE ARMY
BASE REALIGNMENT AND CLOSURE (BRAC)
POLICY GUIDANCE ON
DISPOSAL OF UTILITIES

1. REFERENCE

- a. CERE-MM Memorandum For See Distribution, SUBJECT: Revised Guidance - Privatization/Disposal of Utility Systems at Active Military Installations, 10 October 1997.
- b. Army Regulation 200-1, Environmental Protection and Enhancement.
- c. Army Regulation 200-2, Environmental Effects of Army Actions.
- d. Army Regulation 415-15, Army Military Construction Program Development and Execution.

2. PURPOSE

Cost effective and reliable utility service is vital to supporting ongoing Army missions and economic redevelopment at BRAC installations. This guidance provides faster and simpler methods of transferring ownership of utility systems from the Army. It is in the best interest of the Army and the local communities affected by a base realignment or closure for the Army to transfer utility systems as quickly as is feasible. This guidance addresses real estate issues for the transfer of utility systems and is not intended to revise or supersede existing policies and procedures involving power procurement in the privatization process or the utilization and disposal of real property under the Federal Property Management Regulations, 41 C.F.R. 101-47. Utility systems are treated as real property and not personal property. The guidance applies to water, wastewater, natural gas, electric, steam generation heating and telephone distribution systems categorized as real property under AR 415-15, Appendices H and L.

3. DEFINITIONS

- a. "Privatization" is the divestiture of installation utility facilities in support of a utility service procurement contract action coordinated by an installation Director of Contracting (DOC).
- b. "Disposal" is the conveyance of surplus utility facilities--a real estate action coordinated by a Corps of Engineers District Office (District).

c. "Closed" means an installation where all the missions will cease or be relocated. The entire installation will be excessed and disposed.

d. "Closed, except:" means an installation where a vast majority of the missions will cease or be relocated. Over 95 percent of the military, civilian, and contractor personnel will either be eliminated or relocated. All but a small portion of the base will be excessed and disposed. The small retained portion will be facilities in an enclave for use by the reserve component.

e. "Realignment" means some missions of the installation will cease or be relocated, but others remain. The active component hosts the remaining portion of the base.

4. APPLICATION

a. Privatization can be used only on realigned BRAC installations. Disposal can be used for all BRAC installations, however, it is the only option for closed and closed, except: installations.

b. Although a non-Army tenant may remain on an installation, the tenant must independently negotiate a utility contract. The Army cannot include a contract for utility services to benefit a non-Army tenant nor accept utility services for such tenants as consideration for the disposal of a utility system. The tenant should independently begin negotiations with the future provider of utility services as soon as it is known who will be the provider. Conveyance of a utility system on an installation with an enclave should not occur until after the enclave occupant has been given a reasonable time to independently negotiate and execute a utility contract with the provider.

c. The decision to pursue privatization or disposal is to be made by the installation and MACOM Utility Privatization Point of Contact--in consultation with the Local Redevelopment Authority (LRA). When making such a decision, the installation/MACOM must consider what is in the best interest of the Army and the LRA's redevelopment effort. If a dispute arises between the installation/MACOM and the LRA over the decision to pursue privatization or disposal, the decision will be made by the Deputy Assistant Secretary of the Army (Installations & Housing).

d. Generally, an individual utility system on a BRAC installation should be disposed of as a whole to one utility provider. Realigned installations, however, should evaluate the option of retaining ownership of the utility systems within the new installation boundaries, keeping in mind the general policy of the Army is to privatize utility systems.

5. PRIVATIZATION PROCESS - GENERAL

Privatization of utilities for realigning installations is generally the same process used by active installations. [see paragraph 1(a)]

6. DISPOSAL PROCESS

a. General. Under the disposal process, utilities must be included in a Determination of Surplus (DOS). The disposal process offers the following options for transferring utility systems: 1) Economic Development Conveyance (EDC), 2) Public Benefit Conveyance (PBC), 3) Advertised Sale, and 4) Negotiated Sale. The Federal Property and Administrative Services Act of 1949, as amended, requires the Army to receive cash as consideration for the sale of real property, or other consideration as authorized under the Act (i.e., an exchange of property). The one exception to the cash for consideration requirement for disposals is an EDC to a LRA. An EDC allows the Army to receive services in kind (i.e., reduced utility rates) as consideration for the utility system. Any services received through an EDC may be accepted non-competitively as the Federal Acquisition Regulations (FAR) do not apply. Under a disposal action other than an EDC, the Army will not include a utility contract for a continuing customer as part of the consideration for the sale of a utility system.

b. Timing of Disposal. The disposal of utility systems cannot occur until after the installation disposal NEPA analysis and documentation is completed. Although the disposal of utilities will not take place before the completion of the NEPA analysis, preparations for the transfer or conveyance can and should take place during the time the NEPA analysis is being completed. Also, the Army can lease the system on an interim basis pending completion of the NEPA decision document, but a separate NEPA analysis is required for an interim lease (i.e. an Environmental Assessment or Categorical Exclusion).

c. Availability to LRA. Once it is determined by the installation and MACOM Utility Privatization POC the utilities will be transferred under the disposal process, the utilities will first be offered to a LRA prior to taking any other disposal action. If a LRA expresses an interest in acquiring any utility system, it should include the utilities in its Economic Development Conveyance (EDC) application. Through an EDC, the utilities will be conveyed along with the underlying fee title to the real property pursuant to existing EDC procedures as one transfer. Any portion of the utility system located beyond the EDC boundaries should be transferred by easement to a LRA. No separate estimate of value/appraisal or DA Form 337 is required for a utility system if disposal will be through an EDC. The value of the utilities will be included in the appraisal for the EDC.

d. LRA Requirement. If a LRA wishes to acquire a utility system, the LRA must possess the legal authority to own and operate the utility system or present an acceptable plan for the operation of the system by an authorized provider.

e. Public Benefit Conveyances. If a LRA does not wish to acquire a utility system, the Army will proceed to dispose of applicable utilities through a Public Benefit

Conveyance (PBC) before proceeding with an Advertised Sale or Negotiated Sale. PBCs only apply to water and sewer systems. The disposal process under these methods should be initiated following the Department of Housing and Urban Development's (HUD) approval of the LRA's reuse plan to enable conveyance as soon as practical following the completion of the NEPA analysis. Transfers under a PBC will occur as a result of an application submitted during the state and local screening process. Disposal by Advertised Sale or Negotiated Sale, where appropriate, will apply to those water and sewer systems not transferred as a PBC and to all other types of utility systems. The procedure for transferring water and sewer systems as a PBC is set forth at 41 C.F.R. 101-47.308-4.

f. Advertised and Negotiated Sales. All utility systems not conveyed to the LRA for economic development purposes or transferred under a PBC will be disposed of by Advertised Sale or Negotiated Sale, pursuant to the requirements as provided in 41 C.F.R. 101-47.304. All utility systems will be conveyed through an easement document, which will contain language to convey title to improvements. The easement document can be used to grant the right to own, operate, replace and maintain an utility system on the underlying land as well as title to the improvements/physical components of the system. The DA Form 337 will be an exhibit to the easement document identifying the improvements and providing their value. The easement document must be issued under the following authorities: 10 U.S.C. 2668 or 10 U.S.C. 2669, in accordance with the format included with reference 1(a).

g. Sale Process. The installation will prepare a DA Form 337 to identify the property to be conveyed. The installation, in coordination with the District, shall develop a description of the easement to be attached as an exhibit to the easement document. As-built construction drawings, plat maps, etc. of the utility system may be used in lieu of an actual metes and bounds survey as the legal description for the easement document. If the grantee requires a metes and bounds description, the cost of such description shall be borne by the grantee. The installation will forward the DA Form 337 and the request for easement to the MACOM for approval. The MACOM will forward the request for easement and DA Form 337 to the District. A FOST is not required to convey a utility system with an easement document. Upon receiving all the necessary documentation for the easement document, the District will proceed with an Advertised Sale or Negotiated Sale, where appropriate.

7. ENVIRONMENTAL REQUIREMENTS

a. NEPA. The privatization or disposal of utility systems cannot occur until after the installation disposal NEPA analysis and documentation is completed, as stated previously in paragraph 6(b). All NEPA analysis will be done in accordance with AR 200-2.

b. Environmental Documentation. All environmental documentation prepared in support of the disposal of utility systems will be prepared in accordance of AR 200-1.

c. EDC. Because utility systems transferred through an EDC will be conveyed with the underlying land, except for those portions of the utility system located outside the EDC parcel, the environmental documentation for the underlying land transfer should also address the transfer of the utility system.

8. VALUATION

a. Based on past experiences of Army appraisers and the U.S. Army Center for Public Works, the majority of utility distribution systems alone have a fair market value of less than \$50,000, thus in most cases no formal appraisal is required. Therefore, generally utility systems will be assessed as having a nominal value for purposes of a disposal action. The nominal value will be indicated in the DA Form 337 which will be an exhibit to the easement.

b. However, special circumstances may exist where an installation has sufficient reason to believe the stand alone fair market value of the utility system to the underlying land (i.e. excess capacity) is more than \$50,000. In such cases, a formal appraisal of the system will be necessary. In the latter case, the installation should consult with CPW prior to initiating the appraisal process.